

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
JAMOAL CLARKE,

Plaintiff,

-against-

THE CITY OF NEW YORK, SERGEANT SEAN  
CLAXTON (Shield 1500) and POLICE OFFICER  
MOHAMMAD ALI (Shield 23614),

Defendants.  
-----X

ORIGINAL  
FILED  
CLERK  
2013 MAR 11 AM 9:16  
U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK  
CV 13-1249  
COMPLAINT

JURY TRIAL DEMANDED

BRODIE, J.

AZRACK, M.J.

Plaintiff JAMOAL CLARKE, by his attorney, Joel Berger, Esq., for his complaint alleges,  
upon information and belief, as follows:

***NATURE OF THE ACTION***

1. This is an action to recover money damages arising out of the violation of plaintiff's rights under the Constitution and laws of the United States and the State of New York, including false arrest and false imprisonment, by employees of the New York City Police Department (NYPD),

***JURISDICTION AND VENUE***

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b).

***PENDENT JURISDICTION***

5. This Court also has jurisdiction over plaintiff's state law claims, pursuant to its pendent or supplemental jurisdiction as codified in 28 U.S.C. § 1367.

6. On December 18, 2012, within ninety days after the claims alleged in this complaint

arose, a verified Notice of Claim was duly served upon the Comptroller of the City of New York pursuant to General Municipal Law § 50-e. A Comptroller's hearing pursuant to General Municipal Law 50-H was conducted on March 6, 2013.

7. At least thirty days have elapsed since the service of the Notice of Claim, and adjustment or payment of the claims has been neglected or refused by defendant City of New York.

8. This action is being commenced within one year and ninety days after the happening of the events upon which the claims are based.

***JURY DEMAND***

9. Plaintiff demands trial by jury in this action.

***PARTIES***

10. Plaintiff Jamoal Clarke, age 25, is a black male who is a citizen of the United States and a resident of the State of New York. He is from St. Vincent And The Grenadines, and came to the United States in 2006. He has a GED degree. He has no criminal record of any kind, having never even been arrested except in the incident of this lawsuit. He has been accepted for enlistment in the United States Army and will be formally inducted on or about April 16, 2013.

11. Defendant City of New York is a municipal corporation organized under the laws of the State of New York. It operates the NYPD, a department or agency of defendant City of New York responsible for the appointment, training, supervision, promotion and discipline of police officers and supervisory police officers, including the individually named defendants herein.

12. At all times relevant herein, defendant Sean Claxton, shield 1500, was a sergeant employed by the NYPD, assigned to the 67<sup>th</sup> Precinct in Brooklyn, NY.

13. At all times relevant herein, defendant Mohammad Ali, shield 23614, was a police

officer assigned to the 61<sup>st</sup> Precinct in Brooklyn, NY.

14. At all times relevant herein, defendants Claxton and Ali were acting as agents, servants and employees of defendant City of New York and the NYPD.

15. At all times relevant herein, all defendants were all acting under color of state law.

***FACTS***

16. On September 23, 2012, at approximately 11:20 P.M., in the vicinity of Church Avenue and 54<sup>th</sup> Street in Brooklyn, NY, plaintiff Jamoal Clarke was illegally arrested by defendant Sergeant Sean Claxton.

17. At the time of the arrest plaintiff was merely observing a police action -- the arrest of a single individual -- in which plaintiff was not involved in any manner.

18. Despite the fact that plaintiff was doing nothing wrong, Claxton grabbed him and slammed him into a metal gate, injuring his right shoulder and causing his lower lip and the shoulder to bleed.

19. Claxton handcuffed plaintiff behind his back with metal handcuffs.

20. After plaintiff was handcuffed Claxton punched plaintiff in the back several times with a clenched fist.

21. Plaintiff was placed in a police SUV and, accompanied by approximately five police officers, he was transported to the 67<sup>th</sup> police precinct, 2820 Snyder Avenue, Brooklyn, NY. There were no other arrestees in the SUV.

22. At the 67<sup>th</sup> precinct Mr. Clarke was placed in a squalid cell that smelled of urine and was occupied by 4-5 other arrestees, and he remained in that cell for approximately 1½ -2 hours.

23. Plaintiff's right shoulder was in severe pain and bleeding, and he asked Claxton to transport him to a hospital. Claxton ignored the request.

24. Claxton threatened plaintiff that he was going to be charged with assaulting a police officer and resisting arrest -- two charges that had no basis whatsoever.

25. However, Mr. Clarke was subsequently released with merely a summons for disorderly conduct.

26. Upon his release plaintiff proceeded immediately to Kings County Hospital to have his shoulder examined. He was there for approximately 3-4 hours. He was given a sling that he needed to use for approximately the next two weeks, during which time he experienced severe pain in the shoulder.

27. The summons issued to plaintiff, signed by defendant police officer Ali, alleges a violation of Penal Law § 240.20 (5), which requires that the defendant, "with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof ... obstructs vehicular or pedestrian traffic."

28. Plaintiff did not violate Penal Law §240.20 (5), nor did he commit any other offense.

29. The summons required plaintiff to appear in court at 346 Broadway in Manhattan on Friday, December 14, 2012.

30. Mr. Clarke did appear in that court on December 14, 2012, at which time he was advised by the court clerk's office that the summons had already been dismissed.

31. The clerk stamped "dismissed" on plaintiff's copy of the summons and plaintiff did not have to appear before a judge.

32. The Certificate of Disposition, dated the previous day – December 13, 2012 – states “DISM – LEGALLY INSUFFICIENT.” The judge was Hon. Gerald Pickett, Part SAP-D. A copy of the Certificate of Disposition is annexed to this complaint as Exhibit A. A copy of the summons and the Criminal Court Information written by Ali on the back of the summons is annexed as Exhibit B.

33. Either the police never followed through in support of the summons, or the Court dismissed the summons because the facts recited in the information were legally insufficient to support the charge.

34. PO Ali’s information does not allege that plaintiff acted intentionally or recklessly, and it does not allege that plaintiff caused or risked any public inconvenience, annoyance or alarm. Ali merely asserts that, “as informed by Sgt. Claxton,” plaintiff was “obstructing pedestrian traffic with others” and “refused to disperse.”

35. Even the allegations that recite an insufficient portion of the statutory requirements are untrue, fabricated by Claxton. At no time did plaintiff obstruct pedestrian traffic, either by himself or with others. At no time did plaintiff refuse to disperse.

36. The Criminal Court Information was obviously written hastily and sloppily as an after-the-fact attempt to legitimize an illegal arrest by a police sergeant who did not like the fact that bystanders were observing his activities.

37. In addition to the physical pain in his shoulder from Claxton’s excessive and unnecessary use of force, plaintiff has been emotionally injured by the incident. He has become reclusive and reluctant to engage in activities. He is very fearful of police. He avoids them and becomes worried whenever he sees a police officer.

***FIRST CLAIM FOR RELIEF***

38. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-37.

39. Defendants, by their conduct toward plaintiff alleged herein, violated plaintiff's rights guaranteed by 42 U.S.C. § 1983, the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States, and Article I, §§ 1, 5, 6, 11 and 12 of the Constitution of the State of New York.

***SECOND CLAIM FOR RELIEF***

40. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-37 and 39.

41. The acts complained of herein are a direct and proximate result of the failure of the City of New York and the NYPD properly to select, train, supervise, promote and discipline police officers, detectives and supervisory officers.

42. The failure of the City of New York and the NYPD properly to select, train, supervise, promote and discipline police officers, detectives and supervisory officers constitutes gross and deliberate indifference to unconstitutional conduct by those officers.

43. The official policies, practices and customs of the City of New York and the NYPD, alleged in ¶¶ 1-30, 32 and 33-34 violated plaintiff's rights guaranteed by 42 U.S.C. § 1983, the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States, and Article I, §§ 1, 5, 6, 11 and 12 of the Constitution of the State of New York.

***THIRD CLAIM FOR RELIEF***

44. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-37, 39, and 41-43.

45. The conduct toward plaintiff alleged herein constituted false arrest, false

imprisonment, malicious prosecution, the unnecessary and excessive use of force, and employee negligence.

46. The conduct toward plaintiff alleged herein subjected this man with no prior arrest record to trauma, shock, debasement, shame, fright, fear, humiliation, embarrassment, loss of freedom, harassment, and physical, psychological and emotional injury, trauma, pain, and suffering.

#### ***FOURTH CLAIM FOR RELIEF***

47. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-37, 39, 41-43, and 45-46.


48. At all times relevant herein, the individual defendants were on duty and were acting within the scope of their employment as agents, servants and employees of the City of New York, which is therefore responsible for their conduct under common law, state law and Article I, §§ 1, 5, 6, 11 and 12 of the Constitution of the State of New York.

#### ***PRAYER FOR RELIEF***

**WHEREFORE**, Plaintiff respectfully requests judgment against defendants as follows:

- (a) Compensatory damages against all defendants, jointly and severally;
- (b) Punitive damages against all individual defendants, jointly and severally;
- (c) Reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- (d) Such other and further relief as this Court deems just and proper.

Dated: New York, New York  
March 11, 2013



**JOEL BERGER**  
360 Lexington Avenue, 16<sup>th</sup> Fl.  
New York, New York 10017  
(212) 687-1425

**ATTORNEY FOR PLAINTIFF**



**EXHIBIT A**

CEFCATE OF DISPOSITION  
NUMBER: 33164

THE PEOPLE OF THE STATE OF NEW YORK  
VS.

**FEE: \$10.00**

**CLARKE, JAMUAL**

**09/12/1947**

DEFENDANT

DATE OF BIRTH

**164 LINDEN BLVD**

ADDRESS

**BROOKLYN**

**NY**

**11226-3642**

**09/23/2012**

CITY

STATE

ZIP

ISSUE DATE

DOCKET NUMBER: **2012SK118579**

SUMMONS NUMBER: **4335952958**

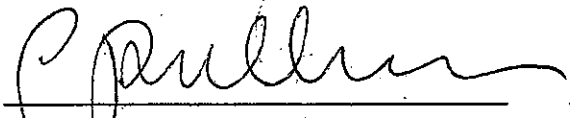
**PL 240.20 05 0V**

ARRAIGNMENT CHARGES

CASE DISPOSITION INFORMATION:

DATE	COURT ACTION	JUDGE	PART
12/13/2012	DISM - LEGALLY INSUFFICIENT	PICKETT,G	SAP-D

I HEREBY CERTIFY THAT THIS IS A TRUE EXCERPT OF THE RECORD ON FILE IN THIS COURT.



**01/03/2013**

COURT OFFICIAL SIGNATURE AND SEAL

DATE

(CAUTION: THIS DOCUMENT IS NOT OFFICIAL UNLESS EMBOSSED WITH THE  
COURT SEAL OVER THE SIGNATURE OF THE COURT OFFICIAL.)

**EXHIBIT B**

AA-100-2 (1/06) **SUMMONS**

**433595295-8**

The People of the State of New York VS

Susp/Rev Check ☐ Yes ☒ No  
 Motorist Exhibited License ☐ Yes ☒ No

Last Name **Clarke** First Name **Jamal** M.I.

Street Address **164 Linden Blvd** Apt. No.

City **Brooklyn** NY State **NY** Zip Code

ID Number **Personal Papers** Date of Birth **09-12-77** Sex **M**

Lic. State **NY** Lic. Class or ID Type **Operator** Date Expires **MO: DAY: YR:** Operator Owns Vehicle ☐ Yes ☒ No

**DISMISSED**

OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE

NY ☐ CT ☐ PA ☐ NJ ☐ Other ☐ Expire

MO: DAY: YR:

VEHICLE TYPE: SEDAN ☐ SUB ☐ VAN ☐ TRUCK ☐ Other ☐ VEH. YR. VEH. CO. ALTERNATE PLATE STATE

VIN No.

THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

AM Time **11:20** PM Date of Offense **9/23/12** County **Kings** Precinct **067**

Place of Occurrence **475 E 54 Street & Church Ave**

VIOLATION OF **Disorderly Conduct** VTL Traffic Admin Penal Other

Description of Criminal Court Offense (including Traffic Misdemeanors)

**Disorderly Conduct**

SPEEDING ☒ DISOBEY TRAFFIC CONT. DEV ☐ Uninspec. Veh. ☐ Unreg. Veh. ☐ Unlic. Oper.

MPH: ☐ In WPD Zones ☐ Sign ☐ Pave ☐ Uninsur. Veh. ☐ Com. Veh. ☐ Bus ☐ Haz. Mat.

☐ Signal Marks

The person described above is summoned to appear at **CRIMINAL COURT** Summons Part. County **NY**

Located at **346 Broadway** **15C**

Date of Appearance **15th day of December** year **2012**

I personally observed the commission of the offense charged above. False statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law. Affirmed under penalty of perjury.

Rank/Full Signature of Complainant

Complainant's Full Name (printed) **P. O. A.** Command Code **10164**

Agency/NCIC **10164** Squad **E1** Tax Receipt No. **947716**

I acknowledge receipt of this summons, I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name **SLA** Date **9/23/12**

**CRIMINAL COURT**

433595295-8

The People of The State of New York v.3.

Susp/Rcv Check ☐ Yes ☒ No  
Motorist Exhibited License ☐ Yes ☒ No

Last Name <b>Clarke Jamaal</b>		First Name <b>M.I.</b>	
Street Address <b>164 Linden Blvd</b>			Apt. No.
City <b>Brooklyn NY</b>		State <b>Y</b>	Zip Code
ID Number <b>Personnel Papers</b>		Date of Birth MO <b>09</b> DAY <b>12</b> YR <b>87</b>	Sex <b>M</b>
Lic. State	Lic. Class or ID Type	Date Expires MO DAY YR	Operator Owns Vehicle <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

## OPERATOR AND/OR OWNER OF VEHICLE BEARING LICENSE

Plate No.	STATE <b>NY</b>	CT	PA	NJ	Other	Reg. Expires MO DAY YR							
FTV PAS	OMT	COM	OML	Other	CHEV	FORD	HONDA	DOOG	OLDS	BUICK	TOYT	NISS	Other
SEDAN	SUBN	VAN	TRUCK	UNCL	Other	Veh. Yr.	Veh. Color	Alternate Plate	State				

VIN No.

## THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS

AM	Time <b>2:20</b>	PM	Date of Offense <b>9/23/12</b>	County <b>Kings</b>	Precinct <b>067</b>
Place of Occurrence <b>c/o E 54 street &amp; Church Ave</b>					
IN VIOLATION OF					
Sec <b>240.20</b>	Sub <b>(5)</b>	V.T.L. Rules	Admin. Code	Penal Code <b>X</b>	Other

Description of Violation, if Not Shown Below, (If returnable to Criminal Court, indicate Court Location and Date of Appearance below and COMPLETE, DATE, AND SIGN INFORMATION ON REVERSE SIDE.)

**Disorderly Conduct**

SPEEDING		DISOBEY TRAFF CONT DEV		Uninspec. Veh.	Unreg. Veh.	Unlic. Oper.
MPH	In MPH Zone	<input type="checkbox"/> Sign	Pave <input type="checkbox"/>	Uninsur. Veh.	Com. Veh.	Bus
		<input type="checkbox"/> Signal	Mark			Haz. Mat.

The person described above is summoned to appear at CRIMINAL COURT

Summons Part County

Located at <b>346 Broadway</b>	<b>1FL NY</b>
Date of Appearance <b>2 PM</b>	day of <b>December</b> year <b>2012</b>

I personally observed the commission of the offense charged above. False statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law. Affirmed under penalty of perjury.

Rank/Full Signature of Complainant

Complainant's Full Name (printed)

Command Code

Agency/NCIC

Squad

Tax Registry No.

I acknowledge receipt of this summons. I understand it is my responsibility to read and comply with the instructions on my copy, and that my signature below is not an admission of guilt.

Name **SEARVED** Date **09/24/12**

MPH



CRIMINAL COURT INFORMATION (DESCRIBE OFFENSE)  
 AT TIPLO, AS INFORMED BY SGT.

CLANTON TAX # 943092. DEPT WAS

ARMED SEVERAL TIMES TO DISPERSE FROM  
 LOCATION. WHILE OBSTRUCTING PEDESTRIAN  
 TRAFFIC WITH OTHERS. DEPT. REFUSED  
 TO DISPERSE.

WARRANT CHECK

☒ Yes

☐ No

~~CONFIRMED BY SGT. CLANTON~~  
 PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED HEREIN. FALSE STATE-  
 MENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45  
 OF THE PENAL LAW, AFFIRMED UNDER PENALTY OF PERJURY.

Date

Signature

### DEFENDANT DESCRIPTION

Eye Color

Hair Color

Ethnicity

Ht.

Wt.

Phone #

### ARRAIGNMENT

Defendant pleads

☐

Guilty

☐

Not Guilty

Date

Judge

①

WARRANT CHECK

~~CONFIRMED BY SGT. CLANTON~~  
 PERSONALLY OBSERVED THE COMMISSION OF THE OFFENSE CHARGED HEREIN. FALSE STATE-  
 MENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45  
 OF THE PENAL LAW, AFFIRMED UNDER PENALTY OF PERJURY.

Date

Signature

②

### DEFENDANT DESCRIPTION

Eye Color

Hair Color

Ethnicity

Ht.

Wt.

Phone #

Defendant pleads \* 4 3 3 5 9 5 2 9 5 8 \*

